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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/691,923	10/23/2003	Kevin M. Klucher	02-04	8461

7590 09/26/2005

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EXAMINER

HAMUD, FOZIA M

ART UNIT	PAPER NUMBER
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1647

DATE MAILED: 09/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/691,923	Applicant(s) KLUCHER ET AL.	
	Examiner Fozia M. Hamud	Art Unit 1647	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-61 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-61 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Election/Restrictions

1. Claims 1-61 are pending.

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-9, 18, 23-25, 33, 38-39, 47, 52, drawn to a method of treating a viral infection, by administering an effective amount of the polypeptide of SEQ ID NO:2, classified in class 424, subclass 85.2.
- II. Claims 1-9, 19, 23-25, 34, 38-39, 48, 52, drawn to a method of treating a viral infection, by administering an effective amount of the polypeptide of SEQ ID NO:18, classified in class 424, subclass 85.2.
- III. Claims 1-9, 20, 23-25, 35, 38-39, 49, 52, drawn to a method of treating a viral infection, by administering an effective amount of the polypeptide of SEQ ID NO:24, classified in class 424, subclass 85.2.
- IV. Claims 1-9, 20, 23-25, 35, 38-39, 49, 52, drawn to a method of treating a viral infection, by administering an effective amount of the polypeptide of SEQ ID NO:26, classified in class 424, subclass 85.2.
- V. Claims 1-9, 21, 23-25, 36, 38-39, 50, 52, drawn to a method of treating a viral infection, by administering an effective amount of the polypeptide of SEQ ID NO:28, classified in class 424, subclass 85.2.
- VI. Claims 1-9, 21, 23-25, 36, 38-39, 50, 52, drawn to a method of treating a viral infection, by administering an effective amount of the polypeptide of SEQ ID NO:30, classified in class 424, subclass 85.2.

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- VII. Claims 1-9, 22-25, 37-39, 51-52, drawn to a method of treating a viral infection, by administering an effective amount of the polypeptide of SEQ ID NO:36, classified in class 424, subclass 85.2.
- VIII. Claims 10-17, 26, 30-32, 40, 44-46, 53, 57-61, drawn to a method of treating a viral infection, by administering an effective amount of the polypeptide of SEQ ID NO:4, classified in class 424, subclass 85.2.
- IX. Claims 10-17, 27, 30-32, 41, 44-46, 54, 57-61, drawn to a method of treating a viral infection, by administering an effective amount of the polypeptide of SEQ ID NO:20, classified in class 424, subclass 85.2.
- X. Claims 10-17, 28, 30-32, 42, 44-46, 55, 57-61, drawn to a method of treating a viral infection, by administering an effective amount of the polypeptide of SEQ ID NO:32, classified in class 424, subclass 85.2.
- XI. Claims 10-17, 28, 30-32, 42, 44-46, 55, 57-61, drawn to a method of treating a viral infection, by administering an effective amount of the polypeptide of SEQ ID NO:34, classified in class 424, subclass 85.2.
- XII. Claims 10-17, 29-32, 43-46, 56-61, drawn to a method of treating a viral infection, by administering an effective amount of the polypeptide of SEQ ID NO:38, classified in class 424, subclass 85.2.

The inventions are distinct, each from the other because of the following reasons:

Inventions I-XII are independent and distinct, each from the other, because the methods are practiced with materially different process steps for materially different

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purposes and each method requires a non-coextensive search because of different starting materials, process steps and goals.

Having shown that these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification and recognized divergent subject matter as defined by MPEP § 808.02, the Examiner has prima facie shown a serious burden of search (see MPEP § 803). Therefore, an initial requirement of restriction for examination purposes as indicated is proper.

2. Applicant is advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filed petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(h).

Advisory Information:

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fozia M. Hamud whose telephone number is (571) 272-0884. The examiner can normally be reached on Monday, Thursday-Friday, 6:00 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda G. Brumback can be reached on (571) 272-0961. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Fozia Hamud
Patent Examiner
Art Unit 1647
22 September 2005



JOSEPH MURPHY
PATENT EXAMINER